IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8111 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BIJALBHAI VALABHAI DAMOR - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR S TRIPATHY for Petitioner(s) : 1,
MR.D.A.DESAI, ASST. GOVERNMENT PLEADER for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 24/12/2007

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner has prayed for an appropriate writ and orders quashing and setting aside the order of the State of Gujarat in

Roads and Building Department bearing No.LND/1099/M.139/3586/R-1 dated 17/07/2000 and consequential orders with respect to the allotment of plot No.1161 in Sector-3 Gandhinagar.

2. Pursuant to the policy of the State Government to allot 330 square meters of housing plots in Gandhinagar to the MPs and MLAs, the petitioner was alloted plot No.741 in Sector-6, Gandhinagar admeasuring 330 square meters. It is the case on behalf of the petitioner that there was a policy of the Government of Gujarat to permit exchange of allotted plots with plots within the same sector or in any other sector in Gandhinagar on charging additional price. That the petitioner submitted an application dated 22/11/1999 and applied for allotment of plot No.116 in Sector-3, Gandhingar in exchange of his allotted plot No.741 in Sector-6. It is the case on behalf of the petitioner that State of Gujarat after obtaining the opinion of the Collector, Gandhinagar and Chief Town Planner, Gandhinagar permitted the exchange of the plots and the petitioner was allotted plot No.1161 in Sector-3 in exchange of plot No.741 in Sector-6 vide order

dated 12/1/2000 and the petitioner was asked to pay additional price of Rs.6,07,700/- towards the difference in prices of plots in Sector - 3 and 6 and the price of additional 65 square meters as plot No.1161 in Sector-3 admeasuring 395 square meters as against 330 square meters of plot No.741 in Sector-6. It is the case on behalf of the petitioner that the petitioner deposited the aforesaid amount by cheque with Collector, Gandhinagar on 25/1/2000 and thereafter the Collector, Gandhinagar vide order dated 28/1/2000 cancelled the allotment of plot No.741 in Sector-6, Gandhinagar and allotted plot No.1161 in Sector-3, Gandhinagar. That thereafter the State of Gujarat has passed the impugned order dated 17/7/2000 cancelling the allotment of plot No.1161 in Sector-3. Being aggrieved and dissatisfied with the same, the petitioner has preferred the petition under Article 226 of the Constitution of India.

3. It is the case on behalf of the petitioner that the impugned order has been passed by the State of Gujarat without any reason and without giving any opportunity of being heard to the petitioner. Thus,

it is in clear violation of principle of natural justice. It is also sought to be submitted on behalf of the petitioner that not only the petitioner deposited an amount of Rs.6,07,700/- even Sanad was issued in favour of the petitioner with respect to plot No.1161 of Sector -3 and petitioner also applied for approval of the building plan for constructing the house on plot No.1161 and Chief Town Planner, Gandhinagar has accorded his approval on 15/3/2000 and he started construction of his house and has spent more than Rs.4,50,000/- and thus the State ought not to have cancelled the allotment of plot No.1161 in Sector-3, Gandhinagar.

4. The submissions and contentions of the petitioner that the impugned order has been passed without giving any opportunity of being heard is concerned, Shri Desai, leaned A.G.P., is not able to satisfy the Court that whether before passing the impugned order any opportunity was given or not. Nothing is on record to suggest that before passing the impugned order of cancellation of allotment of plot No.1161 any opportunity was given. Under the circumstances it appears that the impugned order is

in clear violation of the principle of natural justice and the same cannot be sustained. Under the circumstances without entering into other aspects on merits on this point alone the petition succeeds. It is cardinal principle of law that when any adverse order is passed, having a civil consequences an aggrieved person must be given an opportunity to submit his case. Under the circumstances and without expressing anything on merits, impugned order dated 17/7/2005, requires to be quashed and set aside and is hereby quashed and set aside as the same is in breach of the principle of natural justice. However, it is observed that this Court is not expressing any opinion on merits and it will be open for the appropriate authority to issue Notice upon the petitioner and to give a reasonable opportunity to the petitioner and thereafter take appropriate decision. The aforesaid exercise shall be completed within a period of six months from the date of receipt of this order. Rule is made absolute accordingly. There shall be no order as to costs.

(M.R.SHAH, J.)

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